

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF VIRGINIA
DANVILLE DIVISION

CHRISTOPHER B. JULIAN, et al.,

Plaintiffs,

vs.

No. 4:13-CV-54
Danville, Virginia
February 25, 2014

JAMES RIGNEY, et al.,

Defendants.

TRANSCRIPT OF MOTIONS HEARING
BEFORE THE HONORABLE JACKSON L. KISER
UNITED STATES DISTRICT JUDGE.

APPEARANCES:

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Proceedings recorded by mechanical stenography;
computer-assisted transcription.

1 (Call to Order of the Court at 10:00 a.m.)

2 THE COURT: Good morning, folks.

3 We're here for several motions.

4 Mr. Julian, are you going to handle the argument
5 for you and your wife?

6 MR. JULIAN: Yes, sir.

7 THE COURT: You have to rise when you address the
8 Court, please.

9 MR. JULIAN: Oh. Yes, sir.

10 THE COURT: I need to tell you, Mr. Julian, that it
11 is awful hard for a person to represent himself. You really
12 need a lawyer. But I understand you have got the absolute
13 right to represent yourselves if you choose to.

14 But -- having said this, I can give you some
15 leeway, but I still have to abide by the rules and the
16 statutes of the court and the government. So I cannot
17 violate a rule, but I can certainly -- procedural-wise and
18 presentation-wise can give you some slack, but cannot break
19 the rules, even though I can bend them a little bit.

20 MR. JULIAN: I understand, sir.

21 THE COURT: All right. Just have a seat. Thank
22 you.

23 MR. JULIAN: Thanks, sir.

24 THE COURT: And, Mr. Padmanabhan, you have been
25 before the Court before. And I know you, but I do not know

1 Ms. DeCoster.

2 MS. DeCOSTER: Good morning, Your Honor.

3 THE COURT: Ms. DeCoster, you are in the AG's
4 office?

5 MS. DeCOSTER: I am.

6 THE COURT: And it is the first time that I have
7 known that there was an office in Abingdon for the AG.

8 MS. DeCOSTER: There's just the two of us,
9 actually.

10 THE COURT: Do you handle the great southwest?

11 MS. DeCOSTER: We do.

12 THE COURT: Good for you.

13 All right. I guess we need to get to business.
14 The -- I guess we'll do it by the numbers.

15 Mr. Padmanabhan, you have more people to represent,
16 so I will recognize you first.

17 MR. PADMANABHAN: Okay. Thank you, Your Honor.

18 Your Honor, the federal defendants, which include
19 seven individually named defendants as well as the USDA as
20 an agency, have advanced several arguments in favor of their
21 motion to dismiss and memorandum in support.

22 And to summarize, it is basically failure to state
23 a claim for multiple reasons, failure of subject matter
24 jurisdiction both in terms of *Bivens* as well as FTCA,
25 qualified immunity, sovereign immunity, and failure to

1 exhaust, which goes to subject matter jurisdiction.

2 First, in terms of *Bivens* -- and if the Court at
3 any time has -- wants to stop me because they have read the
4 briefs, that's completely fine. And I'm happy to answer
5 questions, if that's what the Court prefers.

6 THE COURT: Well, we have certainly gone over the
7 briefs and they are prolix, I guess I would say. They
8 pretty well set forth your position.

9 MR. PADMANABHAN: Yes, Your Honor. Then I'll keep
10 -- would the Court like to hear a brief summary or --

11 THE COURT: I'll leave that up to you. It is your
12 case. You argue it the way you want to.

13 MR. PADMANABHAN: Yes, Your Honor. Then I'll keep
14 my argument fairly brief.

15 First, in terms of -- I'll address it in terms of
16 *Bivens*, pretty much how I addressed it in the brief. First,
17 in terms of *Bivens*, these individuals -- the federal
18 defendants in individual capacities, first off, the USDA
19 cannot be sued in a *Bivens* action. And in terms of *Bivens*,
20 they should be dismissed out of hand. And the case law is
21 pretty clear on that.

22 In terms of the individual defendants, the seven
23 individually named defendants, in the complaint the
24 defendant (*sic*) talks about what all the individual
25 defendants did in their roles as USDA employees. He doesn't

1 say anything about what they did to violate his
2 constitutional rights. He doesn't say anything about what
3 constitutional rights were violated. And so it just doesn't
4 rise to a *Bivens*-type claim.

5 THE COURT: Well, in trying to figure out -- and I
6 would agree that the complaint is not all that clear as to
7 what rights are being asserted, but we have divined at least
8 due process as being one of the rights asserted, both
9 substantive and procedural.

10 MR. PADMANABHAN: Yes -- well, I think substantive
11 due process goes more towards the state defendant. I think
12 in terms of the federal defendants he just -- just I guess
13 spells out procedural due process. And with respect to
14 procedural due process, I think the hallmark is a right to
15 be heard. And I think in this case he had multiple
16 opportunities to be heard. He had the application; it was
17 denied. It was sent to mediation; they couldn't reach an
18 agreement. So then it went to the appeals counsel -- the
19 appeal division. It was denied by the hearing officer,
20 Mr. King. Then it went up to Director Mr. Klurfeld; and it
21 was denied again. So the opportunity to be heard was
22 definitely there.

23 The second part of it is there's just no property
24 interest in this case. He does not have a right to loan
25 proceeds such that there is in this event a due process

1 violation.

2 So I think that argument with respect to
3 Mr. Julian, the procedural due process issue is just not
4 there.

5 The defendants also -- plaintiffs also claim common
6 law conspiracy. They claim that these seven individuals
7 acted in concert to deny him some rights. And, again, the
8 pleadings just aren't there; the allegations just aren't
9 there to support a common law conspiracy claim under
10 Virginia law. He hasn't been able to establish or allege
11 the required elements of a conspiracy claim.

12 The next argument, I guess, Your Honor, is
13 qualified immunity. All of these seven defendants are
14 current USDA employees. And they acted clearly within the
15 scope of their employment. There has been no allegation
16 that they did something so egregious, that fell outside of
17 the outer bounds of their employment, such that there's not
18 a clearly established right that has been violated. And so
19 they are entitled to qualified immunity.

20 With respect to sovereign immunity it seems that
21 the defendants have kind of abandoned that in the sense that
22 in his reply he said that he's just suing the individuals in
23 their official capacity for injunctive relief as opposed to
24 monetary relief. So it seems the defendants -- the
25 plaintiffs have abandoned their claim for money damages

1 against these individuals in their official capacities.

2 With respect to the FTCA claims, I think the law is
3 pretty clear that the United States is the only proper
4 defendant. And the seven individually named federal
5 defendants are not a proper defendant in an FTCA claim, such
6 that if this suit were to go forward, that the United States
7 should be substituted for those seven defendants and it
8 should be the Julians versus the United States.

9 But with respect to that, the Julians admit in
10 their reply brief that they didn't exhaust, they never filed
11 the administrative claim. And their excuse is that they
12 didn't know they had to. But that is not an excuse. They
13 never filed an administrative claim with the agency such
14 that there was a failure to exhaust and this Court lacks
15 subject matter jurisdiction over any FTCA claim.

16 Finally, with respect to the Administrative
17 Procedures Act, the complaint was a little unclear in the
18 sense of whether they are actually seeking judicial review
19 of the merits of the underlying claim. And the United
20 States' response to that, just in case the Court construed
21 the complaint as seeking judicial review of the underlying
22 claim and -- the law is basically that this Court has to
23 give substantial deference to the administrative agency's
24 decision, especially when it comes to administrative agency
25 regulations.

1 In this case Director Klurfeld and Hearing Officer
2 King, they followed their procedures; they followed their
3 policy, their law; and they decided that the --

4 THE COURT: I assume the plaintiffs' main argument
5 in that sphere is that the hearing officer chose the wrong
6 version of the regulations.

7 MR. PADMANABHAN: Well, I think the hearing officer
8 -- well, I think the agency first denied it based on the
9 fact that their loan was for -- the intent of the loan was
10 to be used for -- instead of wages, for living expenses.
11 And I think the hearing officer found that wasn't a good
12 reason to deny it, and they misapplied it. So he didn't
13 affirm it, I guess, on that ground.

14 But he affirmed it on the fact that when you apply
15 for a loan for improvement, it has to be reasonable and
16 sufficient for your family and for your household --

17 THE COURT: Well, that's the argument that the
18 plaintiff is making. It should be reasonable or sufficient,
19 not "and."

20 MR. PADMANABHAN: Right. And I think -- and I
21 think the other -- he also makes an argument that the fact
22 that it is not on farm property makes a difference, in that
23 it is located close to farm property somehow --

24 THE COURT: Well, that's the next, I think, maybe a
25 flaw in the plaintiffs' argument. He says the house that is

1 in question is not even on the farm.

2 MR. PADMANABHAN: Right.

3 THE COURT: So how does it qualify for a farm loan?

4 MR. PADMANABHAN: Well, and I think the regulations
5 apply to property that is either on a farm or close -- or
6 adjacent or close to a farm. And so the regulations apply
7 to both in the same manner. And so -- and I think that's
8 what the USDA found, that's what they applied, that's what
9 the agency applied. And it went to the hearing officer and
10 the director of the appeals division. And they both
11 affirmed it on that ground, that -- I mean, the house that
12 they had built was over 4,000 square feet, had multiple
13 foyers, and it was just much more than necessary for a
14 family of three, which was at the time how many people were
15 living in that residence.

16 THE COURT: Would that be true if part of the house
17 was to be used for commercial purpose, such as a
18 wine-processing center?

19 MR. PADMANABHAN: Right. And I think that that's
20 what they were hoping to use at least part of their
21 residence for, as, you know, commercial. And I think they
22 also said that they wanted to use part of their residence to
23 rent out at some points. But I think the fact is it can't
24 be any greater than necessary to -- for a family of that
25 size. And it was just -- USDA found it was so -- just above

1 and beyond --

2 THE COURT: So the size of the family is the test,
3 not the use to which the property is going to be made?

4 MR. PADMANABHAN: Well, I think the size of the
5 family is definitely a significant factor. Now, obviously,
6 if it was a family of 10 or 15 living in that household, the
7 space necessary would be far greater than if it was a family
8 of three, for example. So I think that's definitely an
9 important factor.

10 And like I said, Your Honor, it is not even clear
11 from their complaint if they are trying to seek judicial
12 review of the merits of that claim, but the United States
13 just interpreted it as such, actually to cover its bases, so
14 we would not proceed on that ground alone, as opposed to the
15 others.

16 And, finally, in their reply brief -- or, excuse
17 me, response brief, the plaintiffs also allege a RICO
18 violation in terms of the USDA being a
19 racketeering-influenced corrupt organization. And the only
20 mention of RICO in the original complaint is a one-line
21 throwaway in paragraph 24 that the USDA, et al., is a
22 racketeering-influenced corrupt organization. There's no
23 allegation other than that in the complaint.

24 Now, in the response brief, pretty much the entire
25 response brief is dedicated to alleging that the USDA is a

1 RICO-type organization. But as argued in our reply, the
2 underlying predicates that they allege just don't apply
3 here. They allege obstruction of justice, but the statute
4 they cite is influencing a juror or court officer. They
5 allege mail fraud. They allege fraud in violation of 18 USC
6 1028, but that applies to fraud in relation to
7 identification documents. So they just don't -- they don't
8 allege the required elements necessary for a RICO violation.

9 So for any of those reasons, Your Honor, the United
10 States believes that the seven individually named defendants
11 and the USDA should be dismissed.

12 THE COURT: All right. Thank you, sir.

13 MR. PADMANABHAN: Thank you, Your Honor.

14 THE COURT: Ms. DeCoster, we'll take up
15 Ms. Johnson's motion now.

16 MS. DeCOSTER: Your Honor, I am representing only
17 Wanda Johnson, who is the state Mediation Program Director.

18 As to Ms. Johnson, this case should be dismissed
19 for similar reasons that our codefendants have already
20 argued, for failure to state a claim and because Ms. Johnson
21 is entitled to immunity.

22 As to any due process violation --

23 THE COURT: Well, it is somewhat amazing to me that
24 she did not know that her job or position had been
25 decertified.

1 MS. DeCOSTER: Your Honor, while she may have made
2 a mistake, it is our argument that that doesn't create a
3 cause of action. In particular as to --

4 THE COURT: Well, I'm more curious as to how she
5 did not have that knowledge.

6 MS. DeCOSTER: Well, she has her reasons as to
7 exactly what happened. Basically it comes down to just a
8 simple mistake and oversight. But, once again, not anything
9 that would create a cause of action.

10 As to any due process claims, we would also argue
11 that the plaintiffs had an opportunity to be heard. They
12 did have mediation and they did have an appeal hearing. In
13 addition, it is our argument that filing alone does not
14 confer a property interest.

15 As to -- in addition, even if there was a due
16 process claim, our argument would be that Ms. Johnson is
17 entitled to both absolute immunity and qualified immunity.

18 As to any fraud claim, we would argue, once again,
19 that no harm occurred because the Julians did receive
20 mediation and they also received an appeal hearing. In
21 addition, the plaintiffs in no way relied on a statement by
22 Ms. Johnson that caused them harm, once again, because there
23 was no harm.

24 Finally, Your Honor, as to any conspiracy claim, we
25 would argue again that they, first of all, failed to

1 properly plead fraud, so they can't then plead conspiracy to
2 defraud. And also we would argue that the complaint in no
3 way shows facts that suggest a concerted action. Therefore,
4 they have utterly in their complaint failed to state any
5 claim and Ms. Johnson is entitled to both absolute immunity
6 and qualified immunity.

7 As already argued in the brief, the plaintiffs
8 brought up the RICO claim. There's no suggestion in the
9 complaint of a RICO claim as to Wanda Johnson specifically.

10 Your Honor, for those reasons, we would argue that
11 this case should be dismissed.

12 THE COURT: Thank you, ma'am.

13 All right, Mr. Julian, you get the chance to
14 respond to them as well as argue your partial motion -- or
15 motion for partial summary judgment.

16 MR. JULIAN: Your Honor, are there any restrictions
17 as to what I can --

18 THE COURT: Excuse me?

19 MR. JULIAN: Are there any restrictions as to what
20 I can say in here or talk about, as there were in my
21 hearing?

22 THE COURT: Well, you proceed along the way you had
23 planned. And if you get out of bounds, I will tell you.

24 MR. JULIAN: Okay, sir.

25 They say that it was -- that I had an opportunity

1 to grieve. And I woefully disagree with that as the, as I
2 would say, enterprise established their own set of rules by
3 telling me that I could not present arguments of prejudicial
4 treatment, of negligence, of fraud. They ruled those out.
5 So they have intentionally attempted, from the beginning, to
6 separate the acts of the torts from the decision on the
7 loan.

8 These gentlemen actually, we believe, created false
9 documents upon our application in the very beginning and
10 sent them to us in the mail with an attempt to sabotage our
11 application.

12 THE COURT: Why would they do that?

13 MR. JULIAN: I don't know the answer to that, sir.
14 I would love to know the answer --

15 THE COURT: Do you think they are just mean people?

16 MR. JULIAN: I don't know the answer. I can only
17 say that I have a multitude of potential reasons why they
18 would do it. But why they did it, I don't know.

19 THE COURT: You have run into what every citizen
20 runs into, and that's bureaucracy.

21 MR. JULIAN: Bureaucracy.

22 Well, Your Honor, I have here that letter.

23 THE COURT: Go ahead.

24 MR. JULIAN: I have here the envelope that letter
25 was received in.

1 THE COURT: This is not an evidentiary hearing.

2 MR. JULIAN: I understand. But my point is -- is
3 that if you review the document, you can see that it appears
4 to have been created or manufactured, and that it was sent
5 to me with a post date of November 9th in an envelope
6 postmarked October 22nd.

7 THE COURT: Well, this is one of the things that
8 having a lawyer would have helped you with, because unless
9 you have submitted that as an exhibit in advance, I cannot
10 look at it.

11 MR. JULIAN: Well, I did. Well, Your Honor, I have
12 requested in both of my -- all of my filings the opportunity
13 to amend my pleading. And I understand that in the -- for
14 justice, that I have that right.

15 THE COURT: You don't have a right. I have the
16 discretion of permitting you to do it if I think it will
17 help, but you don't have a right to amend your pleadings.

18 MR. JULIAN: Well, the court also asked us and told
19 us in the filing of our complaint that we weren't to present
20 any statutes, any legal arguments, or present any cases as
21 evidence. So that --

22 THE COURT: Who told you that?

23 MR. JULIAN: It is on your website. It is on your
24 complaint form.

25 THE COURT: I thought you were referring to my

1 order that was entered.

2 MR. JULIAN: No, sir. It is -- I actually called
3 the clerk of court and asked them to explain to me the
4 discrepancy, and the answer was yes.

5 THE COURT: Go ahead.

6 MR. JULIAN: It says if your complaint form is for
7 a pro se complainant, not to do that. So it is a little
8 hard for me -- and I quoted it at the time when I called the
9 clerks -- to make this case without being able to provide
10 those specifics.

11 We did the best we could -- and the federal courts
12 for Miami, New York, and California all said that your -- a
13 pro se's complaints should be limited to 25 pages. So we
14 did the best we could to explain everything that took place
15 and try to make our case without discussing the legal
16 aspects.

17 We believe that this letter was followed up a
18 second time with the fraudulent representations of the Code
19 of Federal Regulations. We also believe, Your Honor, that
20 what happened was that these guys created these documents in
21 early October, which was exactly the time that Ms. Johnson's
22 certification expired, and that being sent to her for
23 mediation was the result of their negligence in creating
24 these documents, to not know that she had lost her
25 certification.

1 We know that in their rule books, in their rule
2 books, it tells them that when an individual requests
3 mediation, that those documents go to ALS, which is
4 Administrative Legal Services in the Department of
5 Justice --

6 THE COURT: Speak to me, Mr. Julian. You don't
7 talk to the other side.

8 MR. JULIAN: Okay.

9 THE COURT: Your purpose there is to address me.

10 MR. JULIAN: Yes.

11 We believe, Your Honor -- we don't know; of course,
12 we can't prove it, but we believe that Ms. Johnson was
13 instructed not to help us. We believe that that was an act
14 of the enterprise.

15 Ms. Johnson did not return a phone call. She did
16 not send us a letter notifying us that she had received our
17 request. We had return receipt from the mail, that she
18 received it on the 13th of December. She never once sent us
19 a letter, never once called us, never once emailed or made
20 any effort to contact us whatsoever.

21 On January -- in January, when I contacted
22 Ms. Johnson on my own accord, she indicated to us that she
23 would be helping us within a matter of days. But you have
24 to understand, Your Honor, at that point in time it was my
25 understanding that my 30 days were up, because they gave me

1 30 days from the November 28th to have mediation.

2 So I find it extremely incomprehensible that these
3 folks who were responsible, from the University of Virginia,
4 to handle mediation would not call or contact us at all,
5 make any effort to contact us or any effort to help us in
6 our request. It leads me to believe that Ms. Johnson knew
7 the day she received our request that she wasn't eligible to
8 handle it.

9 This was followed up by our having to chase down
10 the information on the Internet as to what to do for
11 mediation. And in those communications we were told that
12 the farm chief didn't know.

13 THE COURT: Didn't what?

14 MR. JULIAN: That he didn't know. Those
15 communications were -- it was communicated to us that the
16 Virginia state farm chief was unaware that the state
17 mediation program had not handled our request and that they
18 had just lost their certification, although we -- that's
19 hearsay, Your Honor. It came through the Internet.

20 So how do we know exactly when they knew that?
21 Because, according to the documentation, that certification
22 was lost on October 1st. Ms. Johnson stated that she had
23 lost that certification for failure to do her paperwork or
24 to do her filings with the government. Those filings were
25 due in August, Your Honor.

1 THE COURT: Well, how were you injured other than
2 delayed in filing your claim?

3 MR. JULIAN: I'm sorry, sir?

4 THE COURT: How were you injured other than being
5 temporarily delayed in filing your claim? You ultimately
6 took the mediation. You ultimately availed the mediation --

7 MR. JULIAN: Yes, sir, but that also took more than
8 two months. That's a long time.

9 THE COURT: So you want \$14 million for that?

10 MR. JULIAN: No, sir. I want \$14 million for this
11 RICO activity. That's what I want the \$14 million for.

12 They put me out of business. They destroyed my
13 operation I spent seven years putting up. And they did this
14 by creating fraudulent documentations and supporting
15 regulations through Chevron deference, trying to, as he
16 said, give them leeway in their administration. But he
17 totally leaves out the fact that they did it all under
18 fraudulent terms.

19 Ms. Johnson did nothing to help us. And the State
20 of Virginia did nothing to help us. We handled our own
21 mediation processes. And those are very stressful
22 conditions. You do understand that in order to be eligible
23 for one of these loans you have to be in a situation where
24 you can't get credit elsewhere. It is a requirement.

25 These gentlemen didn't follow their procedures.

1 They didn't do the steps that were required of them,
2 according to their own work manuals. And then they stepped
3 outside of their jobs to create fraudulent documents to take
4 us -- to do -- to deride our application.

5 And we believe that the RICO decided that they
6 weren't going to help us with mediation, they would try to
7 stop this whole thing, because they don't want to attach
8 those torts to that loan; no harm, no foul.

9 And then each of these individuals after that has
10 proceeded to aid and abet this operation in its ultimate
11 goal, which is that itself: to keep that loan from being
12 recognized and to keep these torts from attaching. And
13 there is plenty of evidence to support the fact.

14 I need to turn to my notes for just a second, sir.

15 First, he has stated that we did not have the
16 predicate acts. But the fact is that both of those
17 documents were fraudulent and put in the mail. And that
18 represents mail fraud.

19 Mr. Kraszewski proceeded in the hearing to give
20 testimony to the fact that he had a conversation with me
21 that he had never had. And that's perjury. He was sworn
22 in, told that he was there under penalty of perjury. The
23 hearing officer was a hearing officer for the National
24 Appeals Division and was a hearing officer of an agency of
25 the United States government. He made testimony to him,

1 false testimony. And he -- the hearing officer asked him to
2 clarify it, to confirm it; and he did. And the documents
3 show evidence, Your Honor, that that conversation never
4 occurred.

5 Both the hearing officer and the director, their
6 reviews are completely lacking in fact. They don't address
7 the challenges that we made. They hide the truth. And the
8 argument that was made up here that our house is not on the
9 farm, well, Your Honor, they based -- the director based his
10 decision on that. He based a bunch of his support on that.
11 And the fact is the house is on the farm. To our knowledge,
12 it has always been on the farm. And that is stated clearly
13 in those -- in the original briefs. And how the director
14 comes to the conclusion and makes the argument that the
15 house isn't on the farm is beyond me. That is covered in
16 the original complaint.

17 The other thing that is not -- the hearing officer,
18 in the prehearing, he ruled out our opportunity to discuss
19 the fact that there were items on there that were completely
20 incompetent and false.

21 And the hearing officer, he actually read to us
22 during that time period one of the regulations. I don't
23 have it before me. But that regulation was that the act
24 that causes us to breach the rule, he ruled that that rule
25 would be applied as it was written at the time of our

1 application. But the item that actually broke that rule was
2 the design of the house. And the design of the house
3 happened eight years prior. But the rule says that it is
4 supposed to be applied as it did at -- at the time --

5 THE COURT: What if the house had been designed in
6 1889?

7 MR. JULIAN: Sir?

8 THE COURT: Which rule would apply then?

9 MR. JULIAN: Well -- if the house had been built in
10 1899, which rule would apply?

11 THE COURT: Yeah. If that's your theory, is that
12 the rule -- when you designed the house, was it in 2008?

13 MR. JULIAN: Yes, sir. I wasn't even seeking a
14 loan at that time.

15 THE COURT: Well, what I'm saying, a hypothetical,
16 Mr. Julian, to follow your theory, if the house had been
17 built in 1899, you would have to apply whatever rule was in
18 effect at that time.

19 MR. JULIAN: If that was the case, Your Honor, I
20 would be asking to purchase a house, not to build one. And
21 I didn't even ask to do that.

22 THE COURT: Well, it seems to me that's a rather
23 frivolous argument to say that when the house was designed
24 is when the rule should be applied.

25 MR. JULIAN: Well, Your Honor, they changed the

1 rule.

2 THE COURT: Oh, they did. No question about that.

3 MR. JULIAN: They changed it and they made it
4 incomprehensible. And not only is it incomprehensible, but
5 the other pieces of that rule -- first off, we would argue
6 that that rule is not applicable at all to our case. If you
7 look at the document in terms of -- if you look at those
8 rules, the way they are written, in terms of reading them on
9 the four-corner basis -- I have been an accountant and a
10 programmer for 20 years. I spent my entire life doing
11 financial analysis.

12 THE COURT: What is your view of the Tax Code?

13 MR. JULIAN: What is my view of the Tax Code?

14 THE COURT: Yeah. Do you think it is written
15 right?

16 MR. JULIAN: I think it ought to be simple,
17 simplified, extremely.

18 THE COURT: Go ahead.

19 MR. JULIAN: That's okay.

20 Your Honor, this is an attempt by this organization
21 to manifest an enormous fraudulent scheme. It is their
22 desire to separate those loan proceeds from the torts that
23 occurred. And they did that when they separated out the
24 items on the declination letter that were completely bogus.
25 They did that when they took out the argument that negligent

1 -- as if negligence, fraud, and prejudicial treatment had
2 nothing to do with the decision. How can you -- that's
3 like, you know, the drunk color-blind man going through the
4 red light, kills somebody, and the only thing that is
5 accountable is that he went through the light. And the
6 judge gives him deference because he's color-blind.

7 And each of these individuals, Wanda Johnson, the
8 -- when we requested information -- in fact, we requested
9 information specifically to try and identify proof, to do
10 discovery, Your Honor, from our -- what do you call it when
11 you request information from them?

12 THE COURT: Are you talking about discovery
13 procedures?

14 MR. JULIAN: No, it wasn't discovery. It was
15 Freedom of Information Act requests. When we made those
16 requests, we asked for information that would prove our
17 points. And they came back with information, but they never
18 provided what we asked for. And we reserved the right to go
19 to discovery to find these items. And we're more than
20 willing to update our complaint.

21 THE COURT: All right, sir. Thank you, Mr. Julian.

22 MR. JULIAN: On the motion, Your Honor, to -- that
23 I have --

24 THE COURT: Your motion, go ahead and address it.

25 MR. JULIAN: Yes, sir. I understood that to be a

1 point of law, Your Honor, that contracts require that you
2 have an agreement, that you have an understanding, that
3 there is a compensation. There was no compensation. We ask
4 the Court that that agreement be null and void. They don't
5 have the capability to enter into that agreement. They
6 can't abrogate their own immunity. And they have certainly
7 requested it.

8 THE COURT: All right, sir.

9 MR. JULIAN: As to being allowed to have sovereign
10 immunity, these gentlemen stepped outside their roles.
11 Ms. Johnson stepped outside of her job. They did not do
12 their jobs. And we're more than happy to present all of the
13 evidence to that fact.

14 As to judicial review, we did request judicial
15 review in that. And we don't know what the -- how the Court
16 views that request, because we do understand there's
17 restraints in judicial review. But we prefer to have a jury
18 decide whether that was actually a valid request or not,
19 whether they actually misread those rules, because you have
20 given Chevron deference to these -- to this gentleman back
21 here to interpret that rule. And the hearing officers are
22 told in their own handbooks that they are not to question
23 your decisions. So you have given Chevron deference to
24 these guys who started out with a fraudulent, negligent,
25 prejudicial attempt to deny --

1 THE COURT: Mr. Julian, you are repeating yourself.
2 If you have got something new to say, I'll hear it. But
3 let's not go over old ground.

4 MR. JULIAN: So could the Court clarify for me
5 whether perjury counts as obstruction of justice?

6 THE COURT: No, I'm not your lawyer.

7 MR. JULIAN: Okay. Well, as far as we're
8 concerned, there's predicate acts. There are two specific
9 examples of mail fraud; that Mr. Kraszewski did, in fact,
10 commit perjury, and we consider that obstruction of justice.
11 And we would argue, sir, that an entity and a government
12 agency regularly identifies itself with written documents,
13 that they recognize themselves as -- present themselves
14 based on regulations, and that these guys sent to us a
15 fraudulent document with the agency's letterhead on it and
16 that inside that document they used false representations of
17 the Code of Federal Regulations as authentication features
18 of that document. And those features were fraudulent.

19 It is my understanding, Your Honor, that any time
20 that they have committed a crime, they have violated my due
21 process rights. It is also my understanding that Congress
22 granted me the liberty to apply for these loans, provided
23 that I had met the requirements, and that we met the
24 requirements in every aspect, with the exception of this
25 argument about our house. But we didn't ask them to build

1 us a house. And we don't believe that rule applies to
2 making improvements to a house, particularly when -- if you
3 look at the other facts as to what drove us to this point,
4 to make this loan application.

5 THE COURT: All right. Thank you.

6 You can have a seat, Mr. Julian.

7 You get the last word.

8 MR. PADMANABHAN: Yes, Your Honor, just briefly.
9 Thank you.

10 First with respect to the motion for partial
11 summary judgment, the summary judgment with respect to
12 paragraph 11 of the complaint, and he's asking you to find
13 that the two individuals at the USDA lacked the capacity to
14 enter into that contract. That's necessarily a material
15 issue -- a genuine issue of material fact. It cannot be
16 decided on summary judgment. And that's not even
17 withstanding the fact that we argue that this court lacks
18 subject matter jurisdiction to even entertain the motion for
19 summary judgment. And if the Court finds that there's no
20 subject matter jurisdiction, then it cannot rule on the
21 motion for summary judgment. But, like I said, even if
22 there were subject matter jurisdiction, this is not an
23 appropriate issue for summary judgment because it
24 necessarily implicates a factual issue.

25 The plaintiffs also allege in their motion

1 fraudulent inducement. But in their reply to our memo in
2 opposition they essentially abandon that claim altogether
3 saying aside from -- aside from fraudulent inducement,
4 essentially abandoning that theory altogether. So I think
5 for those reasons summary judgment is inappropriate in this
6 case.

7 With respect to plaintiffs' arguments in opposition
8 to our motion to dismiss, I would say that plaintiffs again
9 have just made conclusory allegations about fraud and what
10 all of these people did in violation of the law. I mean,
11 one thing to note is he states that violations are not --
12 violations of law necessarily give rise to a claim, but
13 qualified immunity does not -- that's not true. Just
14 because an individual may violate the law does not
15 necessarily mean he's not entitled to qualified immunity if
16 he's performing his job as he sees fit.

17 And the plaintiffs also go to great lengths to
18 allege negligence. But even assuming the seven individually
19 named plaintiffs were negligent, that doesn't rise to a
20 constitutional violation. Of course, we don't concede that
21 they were negligent. But even assuming that was the case,
22 there's still no *Bivens* cause of action, there's no cause of
23 action in the Federal Tort Claims Act, there's no cause of
24 action for negligence against these federal employees.

25 And, finally, in terms of RICO, again he just

1 alleges a RICO-type organization without any specificity as
2 to how the USDA or these seven individuals are a RICO-type
3 enterprise. I mean, what did they do to be a RICO
4 organization? I mean, using his logic, there must be
5 thousands and thousands of people that the USDA fraudulently
6 denies loan applications to every year. And there's no
7 evidence to support that fact. Plaintiff just makes
8 conclusory allegations that the USDA and these seven
9 individuals are a RICO-type organization.

10 And in terms of the predicate offenses, like I said
11 in the brief, they just don't apply. The cases, the
12 statutes he cites just don't apply in this case.

13 If there's nothing further, Your Honor --

14 THE COURT: Thank you.

15 MR. PADMANABHAN: -- thank you, Your Honor.

16 THE COURT: All right. For Ms. Johnson?

17 MS. DeCOSTER: Your Honor, my client isn't involved
18 in the summary judgment motion. And unless you have any
19 questions, I have nothing to add to my argument.

20 THE COURT: No further questions.

21 All right. We'll give you a decision in writing.
22 We'll try to sort this thing out.

23 Let's adjourn.

24 (Thereupon, at 10:40 a.m., these proceedings were
25 adjourned.)

1 I certify that the foregoing is a correct transcript
2 from the record of proceedings in the above-entitled matter.

3 _____
4 /s/ Carol Jacobs
Official Court Reporter

March 25, 2014
Date